THE HON'BLE SRI JUSTICE RAMESH RANG-ANATHAN

WRIT PETITION No.1186 OF 1995

Between:

Syed Ibrahim …. Petitioner And

Deccan College of Medical Sciences, Hyderabad…Respondent

THE HON'BLE SRI JUSTICE RAMESH RANG-ANATHAN

WRIT PETITION No.1186 OF 1995

ORAL ORDER:

Aggrieved by the action of the respondents, in terminating the services of the petitioner, vide proceedings dated 29.12.1994, the present writ petition is filed.

Pursuant to a notification issued by the respondent in the year 1987 for the post of Attender-cum-Sweeper, the petitioner submitted his application on 4.4.1987 and was appointed to the post of Attendant-cum-Sweeper on consolidated pay, vide proceedings 12.12.1987. While matters stood thus, the respondent issued termination orders dated 29.12.1994. The petitioner contends that the post in which the petitioner was working is a permanent post and since the college is an aided college and is drawing salaries from the government he is entitled for regularization of his services in accordance with G.O.Ms.No.212. The petitioner would contend that the action of the respondent in termination his services was in violation of Articles 14 and 16 of the Constitution of India.

In the counter affidavit, filed by the respondent, it is stated that the respondent-college is established and administered by the Darus Salam Educational Trust, which is a private trust and that all appointments are made purely on contract basis. It is stated that the extended contract period was to expire on 31.12.1994 and since no sanction was accorded for extension of the contract period beyond 31.12.1994, the services of the petitioner were no longer required and as such his services were not extended and it was decided that the petitioner should be paid one month's salary in lieu of notice. Accordingly the petitioner was relieved on 31.12.1994 and the notice pay was paid to him by cheque dated 5.1.1995 which amount was received by the petitioner. The petitioner's allegation that the respondent – college is an aided college, drawing salaries from the government, is denied as false and baseless. It is stated that salaries of employees are being paid from the fund of the Trust and that no government aid is provided to this Trust. It is stated that G.O.Ms.No.212 dated 22.4.1994 is not applicable to the Trust as it is not under the control of the Government.

On being asked as to how a writ petition would lie against the respondent, which is not an instrumentality of the State under Article 12 of the Constitution of India, Sri J.M.Naidu, learned counsel for the petitioner, would submit that even against a private body/individual a writ petition would lie in case there is statutory violation. Learned counsel would submit that since the petitioner's services were terminated contrary to the provisions of Section 25-F of the Industrial Disputes Act, the writ petition as filed was maintainable. A reading of the averments, made in the affidavit filed in support of the writ petition, would show that the entire basis for filing the writ petition was that the respondent is an aided college receiving aid from the government and that the petitioner was entitled to have his services regularized in accordance with G.O.Ms.Ni.212 dated 21.4.1994. There is no plea, in the affidavit filed in support of the writ petition, that the petitioner is a workman under Section 2(s) of the Industrial Disputes Act, that the respondent-college is an industry, or even that the services of the petitioner were terminated contrary to section 25-F of the Industrial Disputes Act. Sri J.M.Naidu, learned counsel for the petitioner would, however, refer to the counter affidavit wherein in paragraph 5(vii) it is stated that termination of the services of the "workman" whether temporarily or permanent falls under the powers of the employer. Learned counsel would

submit that respondents have themselves chosen to describe the petitioner as a “workman” and this must be presumed to be a tacit admission on their part that the respondent college is an industry since the facts, as can be discerned from the counter affidavit, would show that the provisions of Section 25-F of the Industrial Disputes Act have not been complied with, and the action of the respondent in terminating the services of the petitioner contrary to Section 25-F must be held to be illegal. These contentions are only to be noted to be rejected. In the absence of any averment in the affidavit that the respondents had acted in violation of the provisions of Section 25-F of the Industrial Disputes Act and in the absence of any plea that the provisions of the Industrial Disputes Act are applicable to both the petitioner and the respondent herein, these contentions urged across the bar, do not call for examination.

Since the respondent is not an instrumentality of the State under Article 12 of the Constitution of India, the writ petition, as filed, is not maintainable and is accordingly dismissed. Sri J.M.Naidu, learned counsel for the petitioner would seek leave of this Court to approach the Industrial Tribunal. I see no reason to grant leave. It is, however, made clear that this order shall not preclude the petitioner from availing such remedies, as are available to him in law. No order as costs.

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12-6-2006

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